

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-195
)	
Metro Birch Enterprises, Inc.)	NAL/Acct.No. 200232620008
Licensee of AM Radio Station KPBA)	
Pine Bluff, Arkansas)	FRN 0007-2843-67
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 22, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Metro Birch Enterprises, Inc. (“Metro Birch”), licensee of AM radio station KPBA, Pine Bluff, Arkansas, apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000) for willful violation of Sections 73.49 and 73.3526(a)(2) of the Commission's Rules (“Rules”).¹ Specifically, we find Metro Birch apparently liable for failing to provide an effective locked fence enclosing the base of the station's antenna tower, and by failing to maintain all required items in the station's public inspection file.

II. BACKGROUND

2. On May 21, 2002, an agent from the Commission's New Orleans Field Office inspected station KPBA located in Pine Bluff, Arkansas. The agent observed that the station's antenna tower, which had radio frequency potential at the base, was not enclosed inside a fence or other protective enclosure. Additionally, the station's public inspection file consisted of only a few letters from the public.

III. DISCUSSION

3. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. On May 21, 2002, KPBA's antenna tower had radio frequency at the base and was not enclosed by any fencing or other enclosure.

4. Section 73.3526(a)(2) of the Rules states that “[e]very permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section.” On May 21, 2002, KPBA's public inspection file consisted only of a

¹ 47 C.F.R. §§ 73.49, 73.3526(a)(2).

few letters from the public and was missing other documents including applications filed with the Commission, the station's contour map, ownership reports, requests for time from political candidates, the Public and Broadcasting Manual, and the issues and programs lists.

5. Based on the evidence before us, we find that on May 21, 2002, Metro Birch willfully² violated Sections 73.49 and 73.3526(a)(2) of the Rules by failing to provide an effective locked fence enclosing the base of the station's antenna tower, and by failing to maintain all required items in the station's public inspection file.

6. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for AM tower fencing violations is \$7,000, and the base forfeiture amount for violation of the public file rules is \$10,000.³ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁴ Considering the entire record and applying the statutory factors listed above, this case warrants a \$17,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Metro Birch Enterprises, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for willful violation of Sections 73.49 and 73.3526(a)(2) of the Rules, by failing to provide an effective locked fence enclosing the base of the station's antenna tower, and by failing to maintain all required items in the station's public inspection file.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Metro Birch Enterprises, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503 (b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

13. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Metro Birch Enterprises, Inc. at 219 West 5th Street, Pine Bluff, Arkansas, 71601.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

⁷ See 47 C.F.R. § 1.1914.